

**STATE OF MISSOURI
THREE MEMBER DUE PROCESS HEARING PANEL
DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION**

	, Student)
by	, Parent,)
	Petitioner,)
)
vs.)
)
ST. LOUIS CITY SCHOOL DISTRICT,)
)
	Respondent.)

COVER SHEET OF PERSONALLY IDENTIFIABLE INFORMATION

Student's Name:

Date of Birth:

Parent's Name:

Address:

Local Education Agency: St. Louis City School District

Representative: Margaret Mooney

Address: Lashly & Baer, P.C.
714 Locust Street
St. Louis, MO 63101-1699

Hearing Panel: Janet Davis Baker, Chairperson
Karen Schwartz
George Wilson

Hearing Dates: Not Applicable

Date of Decision: June 19, 2006

**STATE OF MISSOURI
DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
THREE MEMBER DUE PROCESS HEARING PANEL**

_____ , Student,)
by and through his parent and legal guardian,)
_____ ,)
Petitioner,)
)
vs.)
)
ST. LOUIS CITY SCHOOL DISTRICT,)
)
Respondent.)

ORDER OF DISMISSAL

Issue and Purpose of the Due Process Hearing

The parent and guardian (“Parent”) of the minor child (“Student”), Petitioner herein, filed a due process complaint against the St. Louis City School District (“School District”), received by the Missouri Department of Elementary and Secondary Education (“DESE”), on December 19, 2005. Petitioner complained about how the School District handled a discipline issue involving Student at the end of the spring 2005 semester and did not want the School District to send her son to an alternative school, preferring that he remain in his placement at Soldan International Studies High School, a public school within the School District. The Student’s disability category according to his Individualized Education Program (“IEP”) is emotional disturbance.

The attorney for the School District filed a motion to dismiss, or in the alternative, a motion for more definite statement, which was supplemented. The School District argued that the Parent’s complaint did not include an adequate description of the issues or facts relating to Parent’s perception of the problem between the School District and Student so that the School District was unable to determine precisely what issues Parent intended to raise at a hearing and what specific IEPs or evaluations might be at issue. Further, the School District argued that Parent did not state a

claim under the Individuals with Disabilities Education Act (“IDEA”) as Student had been placed in a private school at the request of Parent, which rendered Parent’s complaint moot.

Timeline Information

The original decision from the hearing panel was due February 2, 2006. The School District requested an extension of time for the hearing panel’s decision up to and including April 21, 2006, which was granted by the Chairperson. The School District made a subsequent request for an extension of time for the hearing panel’s decision up to and including June 20, 2006 which request was also granted by the Chairperson. During the interim period there were attempts to achieve a resolution with Parent which did not succeed.

Findings of Fact/Decision and Rationale

The Parent dated her complaint November 18, 2005, which complaint was received by DESE on December 19, 2005. In the interim, there was an IEP developed on December 2, 2005 that recommended Student’s placement in a private school. Parent attended the meeting as did Student. A referral was made by the School District to the Logos School on December 21, 2005, a private day school in the St. Louis area. Parent, by letter of January 24, 2006, directed to the special education supervisor for the School District stated, “As a result of my request, my son, [Student], will attend Logos School. I am still planning on pursuing my request for due process.”

The IDEA requires that disabled children be provided with “a free appropriate public education” (“FAPE”). Board of Education v. Rowley, 458 U.S. 176 (1982). The IDEA, and Missouri laws and regulations implementing the IDEA, allow parents to request due process hearings in matters “relating to the identification, evaluation, or educational placement of the child, or the provision of free appropriate public education to such child.” 20 U.S.C. §1415(b)(6)(A).

Parent’s complaint about how the School District addressed a discipline matter did not suggest that FAPE was not being provided or that some remediation was required by the School

District because of the discipline issue but only expressed concern about a proposed placement, apparently to be temporary, in an alternative school “like he is the criminal.” This proposed educational placement in an alternative school within the School District did not come to pass. Instead, Student remained in the public school where he had been attending until the beginning of the second semester of the 2005-2006 school year, when Student was referred to Logos School. This referral appears to be at least partly based upon the request of Parent, as acknowledged in Parent’s January 24, 2006 correspondence.

Any complaint regarding a proposed placement that did not come to pass is made moot by Student’s new agreed placement. Parent’s request that her child attend Logos School was honored. Parent did not assert that Student was not receiving FAPE at Soldan or would not be provided FAPE at Logos School. Parent received the relief requested in the complaint – no placement in an alternative school. Thus, there is no current controversy between Parent and the School District for the hearing panel to address. See McCarthy v. Ozark School District, 359 Fed. 3d 1029, 1035 (8th Cir. 2004).

The decision of the hearing panel finding moot Parent’s complaint based upon the School District honoring Parent’s request for private placement at Logos School and not placing Student at an alternative school does not preclude Parent from filing a complaint as to whether:

1. FAPE is being provided by the placement at Logos School; or
2. the December 2, 2005 IEP or any subsequent IEP was reasonably calculated to provide the Student with FAPE in the least restrictive environment.

It is hereby ORDERED that the School District’s motion to dismiss is granted and the Petitioner’s request for a due process hearing is dismissed.

Appeal Procedure

This order constitutes the final decision of the Missouri Department of Elementary and Secondary Education in this matter. Pursuant to §162.962 R.S.Mo., the following procedures apply to requests for judicial review:

1. Proceedings for review may be instituted by filing a petition in the state circuit court of the county of proper venue within forty-five (45) days after the receipt of the notice of the agency's final decision and are governed by Chapter 536, R.S.Mo., to the extent not inconsistent with other provisions of Chapter 162 R.S.Mo. or 34 C.F.R. Part 300.
2. The venue of such cases shall be at the option of the plaintiff, be in the Circuit Court of Cole County, or in the county of the plaintiff's residence.
3. You also have a right to file a civil action in federal or state court pursuant to the Individuals with Disabilities Education Act, 34 C.F.R. § 300.512.

IT IS SO ORDERED this _____ day of June, 2006.

Janet Davis Baker
Chairperson

ACCORD: George Wilson
Karen Schwartz

Copies sent this date to:

Petitioner (by regular and certified mail)
Margaret M. Mooney (by regular mail and e-mail)
Karen Schwartz (by regular mail and e-mail)
George Wilson (by regular mail and e-mail)
Margaret Strecker, DESE (by regular mail and e-mail)
Wanda Allen, DESE (by regular mail and e-mail)